IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13647 of 2006

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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METRO TOURS & TRAVELS THR' ITS SOLE PROPRIETOR - Petitioner(s)
Versus
OIL & NATURAL GAS CORPROATION - Respondent(s)

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Appearance :

MR SANJAY A MEHTA for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR AJAY R MEHTA for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 04/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioner – Metro Tours and Travels, has filed this petition under Article 226 of the Constitution and prayed that the respondent – ONGC be directed to consider the price bid of the petitioner in respect of tender No. BDA/MM/BASIN/IND/JEEPTAXIES/ 24/2005-2006/B26MC06003. It is further prayed that if such decision is taken without considering the price bid of the petitioner then the same be quashed and set aside.

When this petition was placed before this Court for admission for the first time on 14.7.2006 Notice was ordered to be issued in the matter in view of the averments made on oath in Para : 4.9 and 4.10 of the petition, on condition that first the petitioner shall deposit Rs.25,000/- with the registry of this Court. Accordingly, the Notice was ordered to be issued after the petitioner deposits Rs.25,000/- with the registry of this Court.

In the petition, following averments have been made by the petitioner in Para : 4.9 and 4.10 respectively :

IN PARA : 4.9

> “Thereafter on or about 12.7.2006, the petitioner came to know that the respondent corporation by its letter dated 10.7.2006, posted on 11.7.2006 communicated to other three bidders out of the total four bidders, excluding the petitioner that the price bid shall be opened on 12.7.2006 i.e. the very next day at about 3.00 p.m. Having come to know of the same, the petitioner rushed to the respondent's office and tried to inquire as to whether the respondent Corporation has not sent any communication to the petitioner or the same has

not been received by the petitioner for some reason. On such, inquiry, the petitioner was informed that the respondent Corporation had sent such communication only to three bidders out of total four bidders excluding the petitioner. The petitioner was also informed that the respondent Corporation had decided not to open the price bid of the petitioner. On inquiry about the reason of such exclusion of the petitioner, the petitioner was given an absolute evasive reply by the concerned officers of the respondent corporation, stating that the decision was taken by the higher authorities and that petitioner was not supposed to be informed about the reasons for such decision. The petitioner was shocked to receive such a reply from the respondent corporation's officers. On persistent inquiries, the petitioner was assured that he shall be communicated after the concerned officers of the respondent corporation take a decision to convey such communication to the petitioner."

PARA : 4.10

The petitioner submits that as per the best available informed to the petitioner, after the submission of the tender document by the other three bidders, the respondent corporation had called for further clarifications and explanations from the other three bidders in respect of the tenders submitted by them, whereas no such clarification or explanation was sought for from the petitioner. Not only that, in spite of the fact that the petitioner had submitted and furnished all the documents, data particulars required by the respondent corporation, the respondent corporation has illegally, with mala-fide intentions and in colorable exercise of powers vested in the officers of the respondent corporation, with an intention to favour the persons of their own choice, resorting to illegal discrimination and causing grave injustice to the petitioner, have excluded the petitioner and have not considered the price bid of the petitioner for the purpose

of the contract for 27 Jeep Taxies, for which the tender in question was invited."

In response to the Notice issued by this Court Shri Pramod Kumar, Manager (MM Section) of the respondent – Corporation has filed his reply Affidavit wherein it is contended that the petitioner has deliberately suppressed the material facts and mislead this Court by contending that they were trying to favour other bidders as against the petitioner.

In Para : 5 of the Reply Affidavit it is stated that ".....It is a matter of record that in the present case, the petitioner has not submitted the original integrity pact duly initialed and signed by the officer of the respondent Corporation and has submitted a photo copy. The original stamp paper is filled in. **However, the other pages are photo copies wherein the signature of the respondent's officer is not in original.** Thus, there is no completed contract. Apart from this, the entire tender document submitted is a photo copy. This bid was submitted by the petitioner in an envelope with all details, viz. tender number, name of the **bidder, etc.** ....."

In Para : 9 of the Reply Affidavit the respondent has dealt with the averments made in Para : 4.9 & 4.10 of the petition.

However, by way of Rejoinder the petitioner has tried to submit that after obtaining the tender document, running into about 104 pages, including stamp paper which is not form part of the bound tender document, pinned up separately and numbered as Page ; 98.

In view of the Affidavit in Rejoinder filed by the petitioner, learned Counsel Shri Ajay Mehta, appearing for the respondent Corporation has produced before us the original tender form. From bare look at it, it is clear that stamp paper at Page : 98 was removed by the petitioner. Under the circumstances, when serious disputed questions of facts are involved in the matter then certainly this Court would not like to exercise its extra-ordinary jurisdiction under Article 226 in favour of the petitioner.

However, Shri Sanjay Mehta for the petitioner submitted that discriminatory treatment is meted out by the respondent. He submitted that petitioner's price bid was not opened on account of the petitioner's failure to return the integrity pact duly signed along with the bid and that the same was qualified for outright rejection of the bid. Thereafter, the person concerned, namely, Shri Pramod Kumar, Manager (MM Section), who has filed his Affidavit in this case on behalf of the respondent Corporation had by his letter dated 3.3.2006, addressed to one party i.e. M/s. Ajay Medical, asked to submit the original integrity pact duly signed by the party. It is true that such a letter was addressed by Shri Pramod Kumar, Manager (MM Section) of the respondent – Corporation to one M/s. Ajay Medical for submitting the original tender duly signed by the applicant. However, the case of the petitioner stands on a different footing. As stated earlier, it is clear from the original tender form that at Page : 98 the stamp was separately pinned up

by the petitioner. In such type of cases there is no question of discriminatory treatment.

In view of the above discussion this petition fails and is hereby dismissed. Notice discharged. No order as to costs.

The amount of Rs.25,000/- deposited by the petitioner at the time of issuing notice be now refunded to the petitioner.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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